Office - Supreme Cou
F I L E D

No. 884

IN THE

Supreme Court of the United States

OCTOBER TERM, 1939

STATE OF OHIO, EX REL. [illegible]

Petitioner,

vs.

PAUL J. PRICE, CHIEF, DAYTON POLICE DEPARTMENT,

Respondent.

STATE OF OHIO, EX REL. [illegible]

Petitioner,

vs.

PAUL J. PRICE, CHIEF, DAYTON POLICE DEPARTMENT,

Respondent.

JOINT PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OHIO.

JOSEPH W. BRANCH,
Counsel for Petitioners.

MIDWEST LAW PRINTING AND PUBLISHING CO., CINCINNATI, OHIO

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956.

STATE OF OHIO, EX REL. EDWARD W. FOCKE,
Petitioner,

vs.

PAUL J. PRICE, CHIEF, DAYTON POLICE DEPARTMENT,
Respondent.

STATE OF OHIO, EX REL. OTTERBEIN CREAGER,
Petitioner,

vs.

PAUL J. PRICE, CHIEF, DAYTON POLICE DEPARTMENT,
Respondent.

JOINT PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OHIO.

Edward W. Focke and Otterbein Creager, petitioners, jointly pray that a writ of certiorari issue to review the judgment of the Supreme Court of the state of Ohio, en-

tered in the above entitled cases on June 6, 1956, rehearing denied, July 5, 1956.

CITATION TO OPINIONS BELOW.

The opinion of the Ohio Supreme Court is officially reported in 165 Ohio State Reports, p. 340. Rehearing denied, 165 O. S. 110. The opinions of the Court of Appeals of Montgomery county, Ohio, are unreported and printed in Appendix A herein.

JURISDICTION.

The judgment of the Ohio Supreme Court was entered on June 6, 1956, rehearing denied without opinion, July 5, 1956. The jurisdiction of this court is invoked under 28 U. S. Code, Section 1257 (2-3).

QUESTIONS PRESENTED.

I. Whether there is lack of due process and a violation of immunity from unreasonable arrest upon warrants issued without determination of probable cause, secured to citizens of the United States by Amendment Four of United States Constitution, and extended to states by Amendment Fourteen, Section 1, when a deputy clerk of a municipal court issues warrants of arrest as a ministerial act without determination of probable cause therefor, upon the filing of one affidavit with her charging a misdemeanor, namely, a violation of a municipal ordinance imposing a city income tax.

II. Whether persons arrested on such warrants have an adequate remedy at law by way of appeal, which precludes them from resorting to habeas corpus.

STATUTES INVOLVED.

The statutes involved are Sections 1901.31, 2725.01, 2725.06, 2935.10 and 2935.11 of Revised Code of Ohio.

STATEMENT.

Petitioner Focke was arrested upon a warrant of arrest issued May 10, 1955, by an appointed deputy clerk of the Municipal Court of Dayton (whose duties are prescribed by Ohio Revised Code Sec. 1901.31 (H) (see also Ohio Constitution Art. IV, Sec. 10)), without determination of reasonable ground to believe the offense charged had been committed (see R. C. Secs. 2935.10 and 2935.11), and solely because an affidavit charging the offense was filed with her. When arraigned, Focke refused to plead or enter appearance in that court (filing motion to quash for lack of due process, appearing expressly for the purpose alone of disputing jurisdiction, which motion is held in Ohio not to concede jurisdiction nor to enter appearance). Upon denial of motion, he applied directly to the Court of Appeals for habeas corpus, which court is given original jurisdiction in habeas corpus by Ohio Constitution Art. IV, Sec. 6. (See also Ohio Constitution Art. I, Sec. 8.) His petition for habeas corpus, filed May 26, 1955, alleges that said deputy was without statutory authority to issue such warrants; that there was lack of due process, and a violation of his right of security under Ohio Constitution Art. I, Secs. 14 and 16, and the U. S. Constitution, Amendments 4 and 14 (1).

Petitioner Creager was arrested June 8, 1955, upon a similar warrant issued by said deputy clerk in like manner. He applied directly to the Court of Appeals for

habeas corpus, not waiting for arraignment below. His petition alleges the same grounds for habeas corpus and similar facts. The Court of Appeals accepted jurisdiction in both cases, issued alternative writ for Price as arresting officer; upon his return of writ admitting his custody under said warrants, it heard the matter on briefs and oral arguments, and on November 17, 1955, filed an opinion refusing the relief on the ground that said deputy has authority under Revised Code 2935.11 to issue such warrants as a ministerial act, citing *Hornack v. State,* 39 Ohio Appellate Reports, 203, and *State, ex rel. Goodman, v. Redding,* 87 Ohio State 388. Relators duly filed, November 25, 1955, application for rehearing, reiterating the state and federal constitutional violations. Said court refused rehearing, January 4, 1956, in opinion citing *State v. Gutella,* 59 Ohio L. Abstract 289, which had held an affidavit and warrant for arrest sufficient if the affidavit contained the affiant's belief that he had reasonable grounds. Relators duly appealed as of right on constitutional grounds to the Ohio Supreme Court, January 26, 1956. Said court is the highest tribunal in the state to which they can appeal. Said court on June 5, 1956, affirmed the Court of Appeals, on the authority of *Yutze v. Copelan, Chief of Police,* 109 Ohio State Reports 171, where a person arrested, tried, found guilty, and fined, for violating a municipal (garbage) ordinance, invoked jurisdiction of Common Pleas Court for habeas corpus *contending the ordinance was unconstitutional and void.* That court dismissed his application, holding the remedy by habeas corpus was proper, but the ordinance was constitutional and valid. The Court of Appeals affirmed that the ordinance was valid, but stating that "habeas corpus will not issue to test the constitutionality of an ordinance after conviction and

before review." The Ohio Supreme Court affirmed, deciding the plaintiff in error had pursued the wrong remedy. Your petitioners duly petitioned for a rehearing, reiterating their state and federal constitutional contentions and pointing out that they had not raised an issue of constitutionality of the ordinance itself, but only of the lack of due process in their arrest. The rehearing was denied without opinion, July 5, 1956. Petitioners filed notice of appeal to this court for certiorari, with proof of service, July 16, 1956.

REASONS FOR GRANTING THE WRIT.

The decision of the court below in the instant case is in conflict with general principles as applied to issuance of warrants, announced by this court in *Ex parte Burford*, 3 Cranch 447; *Bram v. U. S.*, 168 U. S. 532, 42 L. Ed. 568, 17 S. Ct. 183; *Hague v. C. I. O.*, 101 Fed. 2nd 774, cert. granted, 306 U. S. 624, modified, 307 U. S. 496; *Marron v. U. S.*, 275 U. S. 192, 197; *Sgro v. U. S.*, 287 U. S. 206, 210; *Weeks v. U. S.*, 232 U. S. 383, and others. See also *Instructions to U. S. Commissioners*, by Mr. Justice Bradley (1877), 3 Woods Reports 502, and *Blackstone's Commentaries* (by Chitty), Vol. 2, Book 4, Chapter 21, "Of Arrests," pp. 234, 235.

Clearly the questions are of importance sufficient to require a review by this court. They concern fundamental constitutional rights of millions of private citizens who under the authority of the judgment complained of will be exposed to risk of having their liberty taken away by anyone willing to swear to a charge, however fantastic, however unsupported by fact. It abdicates the jurisdiction and power of courts and reduces the law courts and

court officials to mere servants of any affiant, powerless to stop unreasonable arrests. It makes Ohio even lower than a "police state," where at least arrests are made at the will of public officials, not of anyone.

CONCLUSION.

For the foregoing reasons this petition for a writ of certiorari to the Ohio Supreme Court to send up the records in cases Nos. 34714 and 34715 on its docket, should be granted.

Respectfully submitted,

JOSEPH W. SHARTS,

Counsel for Petitioners.

APPENDIX A.

Opinions of the Court of Appeals.

STATE, EX REL. FOCKE, v. PRICE, ETC.

Opinion.

(Rendered on the 1st day of August, 1955.)

By the Court:

Submitted on demurrer of relator to the answer of respondent, and on motion of respondent for judgment on the pleadings.

The instrument filed by respondent and originally designated "Return of writ", which was stricken, and "Answer" substituted is in no sense an answer; it is drawn as a return of writ and is couched in the same language and has the same defects as the return of the writ in State, ex rel. Creager, v. Price, case No. 2350, decided this day. No other return of writ has been filed. We regard the instrument as a return of writ and the demurrer of relator as a motion to strike the writ for failure to comply with the requirements of paragraphs (A) and (B) of Section 2725.14, R. C. Motion to strike sustained.

The motion of respondent for judgment on the pleadings is not supported by the record, and is hereby overruled.

Respondent will be granted leave to file return of writ within ten days after an entry journalizing this opinion is filed.

Miller, P. J., Hornbeck and Wiseman, JJ., concur.

Opinion.

(Rendered on the 1st day of August, 1955.)

By the Court:

Submitted on motion of relator to strike the return of the writ, and on motion of respondent for judgment on the

pleadings, and on motion of relator to strike respondent's motion from the files.

Upon an examination of the return of the writ filed by respondent, it cannot be determined whether relator was or was not arrested, and is or is not restrained of his liberty. The return of the writ does not comply with the requirements of paragraphs (A) and (B) of Section 2724.14, R. C. Motion to strike return of writ is sustained.

Motion of respondent for judgment on the pleadings is not supported by the state of the record. Motion of relator to strike respondent's motion is sustained.

Respondent will be granted leave to file a return of writ within ten days after an entry journalizing this opinion is filed.

Miller, P. J., Hornbeck and Wiseman, JJ., concur.

Opinion.

(Rendered on the 20th day of September, 1955.)

By the Court:

Submitted on motion of relator for an order requiring respondent to make the return of writ definite and certain. The record does not lend support to the motion and it is hereby overruled.

The motion of respondent for judgment of dismissal on the pleadings is also overruled.

An entry may be drawn accordingly.

Miller, P. J., Hornbeck and Wiseman, JJ., concur.

Opinion.

STATE, EX REL. CREAGER, V. PRICE, ETC.

(Rendered on the 20th day of September, 1955.)

By the Court:

Submitted on motion of relator for an order requiring respondent to make the return of the writ definite and

certain. The record does not lend support to the motion and it is hereby overruled.

An entry may be drawn accordingly.

Miller, P. J., Hornbeck and Wiseman, JJ., concur.

Opinion.

(Rendered on the 17th day of November, 1955.)

By the Court:

This is a companion case to No. 2348, which this day has been decided by this court. The writ will be denied, for the reasons indicated therein.

Miller, P. J., Hornbeck, J., and Collier, J., concur.

Opinion.

STATE, EX REL. FOCKE, V. PRICE, ETC.

(Rendered on the 17th day of November, 1955.)

Miller, J.:

This is an action in habeas corpus wherein the relator alleges that he is being unlawfully restrained of his liberty for the reason that the warrant upon which he was arrested was not issued in accordance with law.

The record reveals that the relator was arrested upon an affidavit sworn to by George Wartzbaugh, an investigator of the city income tax department for the city of Dayton, charging him with a misdemeanor under Section 13 of Ordinance No. 13922 in that he refused to permit a duly authorized agent of the superintendent of taxation of said city to examine the books, records and papers of the relator for the purpose of ascertaining whether or not there was any tax due; that said affidavit was sworn to before one V. Richards, a deputy clerk of the Municipal Court of said city, who thereupon issued a warrant for the arrest of the relator upon the filing of said affidavit in the Municipal Court.

The record reveals further that the relator is now being restrained of his liberty by virtue of the arrest under said warrant.

The question presented is whether the deputy clerk had authority to issue the warrant, or may such writ be issued only by the clerk of said court? R. C. 2935.10 provides:

> "Any judge or clerk of a court of record, or of any municipal court, or any magistrate, may issue process for the arrest of a person charged with an offense returnable in the court having jurisdiction thereof."

The power of the clerk is also defined in the Uniform Municipal Act, to-wit: R. C. 1901.31, Section (E):

> "The clerk of a municipal court should have * * * power to issue and sign all writs, process, subpoenas issuing out of the court * * *."

The duties of a deputy clerk of such court are defined by Section (H) of the above statute, to-wit:

> "* * * Each deputy clerk shall take an oath of office before entering upon the duties of his office, and when so qualified, may perform the duties appertaining to the office of the clerk. * * *."

The law defining when a warrant may issue is set forth in R. C. 2935.11, to-wit:

> "When an affidavit charging a person with the commission of an offense is filed with a judge, clerk, or magistrate, if he has reasonable ground to believe that the offense charged has been committed, he shall issue a warrant for the arrest of the accused."

Counsel for the relator urges that under Section 1901.31 of the Revised Code the clerk has the power to issue the warrant and that R. C. 2935.11 requires that in exercising such power he must determine if reasonable grounds exist to believe that the offense charged has been committed. It

is the contention of the relator that the power conferred upon the clerk requires an act of discretion which may not be delegated to a deputy. But we find that the Ohio authorities do not support the conclusion that such power is discretionary. It is said in 5 O. Jur. (2d), 27, Section 17, that the issuance of a warrant is a ministerial act, which may be compelled by mandamus. Citing Hornack v. State, 39 O. App., 203, 177 N. E., 244, and State, ex rel. Goodman, v. Redding, 87 O. St., 388, 101 N. E., 275. In the Hornack case, supra, the court held that even in the issuing of a search warrant a ministerial act is involved, and a finding of probable cause by a judge or magistrate is not required. It is interesting to note that the opinion in this case was written by Judge Weygandt, who stated on page 205:

> "Before commenting upon the wording of the newly-enacted statute in question, it should be noted that by the great weight of general authority the issuance of warrants, whether for search or for arrest, is regarded as a ministerial act. In 5 Ruling Case Law, 626, under the subject of 'Clerk of Courts', appears the following:
>
> 'The courts uniformly hold that the office of clerk of a court of justice is ministerial, and that it includes no judicial authority except by constitutional or legislative provision. There is some conflict of opinion as to the judicial or ministerial nature of certain specific duties of a clerk of court; but if his official duty is prescribed by law, then his action in performance of that duty is ministerial.'"

And at page 206:

> "'When an official duty does not belong inherently to the office itself, but may be devolved upon some other officer to perform, it is ministerial and its performance may be required by mandamus.
>
> The duty assigned by statute to a municipal court judge of issuing warrants, where the complaint and affidavits are sufficient, is ministerial and one which may be controlled by judicial power, and mandamus lies to compel the issuing of such warrants.'

> Then, too, in the Rosanski case, supra, the opinion contains the general statement that the issuance of warrants, whether for search or for arrest, is a ministerial act."

It should also be noted that R. C. 2935.10 provides that any clerk of a court of record, or municipal court, may issue process for the arrest of a person charged with an offense. The word "power" is not found in this section as in R. C. 1901.31, which relator relies upon. This section clearly indicates that no discretion is required to be exercised by the clerk for the issuing of a warrant, but that it is a duty imposed upon the clerk.

Relator cites the case of Nicholas v. Cleveland, 125 O. St., 474, but this case is not parallel with the case at bar for it involved a search warrant issued by a deputy clerk when the statute did not give such power to the clerk. G. C. 13430-3 then provided:

> "A warrant for search shall not be issued until there is filed with the judge or magistrate, an affidavit. * * *."

It will be noted that under this section no provision is made for filing the affidavit with the clerk. In holding that the clerk has no power to issue the warrant, the court stated, at page 479: "The clerk is merely a ministerial officer; his function is to carry out the orders of the judge."

It therefore appears to this court that the arrest of the relator was lawful. When such facts appear a discharge from custody by a writ of habeas corpus can not be allowed. In re Burson, 152 O. St., 375:

> "Where a person restrained of his liberty is in custody of an officer under process issued by a court or magistrate, or by virtue of a judgment or order of a court of record, and the court or magistrate had jurisdiction to issue the process, render the judgment or make the order, a discharge from custody by the writ

> of habeas corpus will not be allowed. Such person has an adequate remedy at law by way of review on appeal."

See also R. C. 2725.05.

We are therefore of the opinion that the writ may not be allowed.

Hornbeck, J., and Collier, J., concur.

Opinion.

State, ex rel. Focke, v. Price, Etc.
State, ex rel. Creager, v. Price, Etc.)

(Rendered on the 4th day of January, 1956.)

By the Court:

This is an application for a rehearing in which it is urged that the warrant for the arrest of the relator was issued in violation of his constitutional rights as set forth in Article I, Section 14, of the Ohio Constitution, and the Fourteenth Amendment to the federal Constitution.

As stated previously, we are of the opinion that the filing of the affidavit constituted "probable cause" for the issuing of the warrant for arrest under the provisions of R. C. 2935.11; that when such an affidavit is properly filed, the action of the clerk in issuing the same is ministerial and not judicial in nature. In State v. Gutilla, 59 O. L. Abs., 289, this court held in Syllabus 1:

> "An affidavit which states that the affiant has reasonable grounds to believe that an offense has been committed is sufficient to require the issuance of a warrant under Section 13432-9 GC."

Therefore, there has been no infringement of any rights guaranteed to the relator by either the state or federal Constitutions.

The application is denied.

Miller, P. J., Hornbeck, J., and Collier, J., concur.

APPENDIX B.

STATE, EX REL. FOCKE, APPELLANT, v. PRICE, APPELLEE.

Journal Entry of Ohio Supreme Court.

(Dated June 6, 1956.)

This cause came on to be heard upon the transcript of the record of the Court of Appeals of Montgomery county, and was argued by counsel. On consideration whereof, it is ordered and adjudged by this court, that the judgment of said Court of Appeal be, and the same is hereby affirmed; and it appearing to the court that there were reasonable grounds for this appeal it is ordered that no penalty be assessed herein.

It is further ordered that the appellee recover from the appellant his costs herein expended taxed at $.....

Ordered, that a special mandate be sent to the Court of Appeals of Montgomery county, to carry this judgment into execution.

Journal Entry.

(Dated July 5, 1956.)

Upon consideration of the above application for rehearing, it is ordered by the court that rehearing be, and the same hereby is, denied.

APPENDIX C.

STATE, EX REL. CREAGER, APPELLANT, v. PRICE, APPELLEE.

Journal Entry of Ohio Supreme Court.

(Dated June 6, 1956.)

This cause came on to be heard upon the transcript of the record of the Court of Appeals of Montgomery county, and was argued by counsel. On consideration whereof, it

is ordered and adjudged by this court, that the judgment of said Court of Appeal be, and the same is hereby affirmed; and it appearing to the court that there were reasonable grounds for this appeal it is ordered that no penalty be assessed herein.

It is further ordered that the appellee recover from the appellant his costs herein expended taxed at $.....

Ordered, that a special mandate be sent to the Court of Appeals of Montgomery county, to carry this judgment into execution.

Journal Entry.

(Dated July 5, 1956.)

Upon consideration of the above application for rehearing, it is ordered by the court that rehearing be, and the same hereby is, denied.

APPENDIX D.

STATE, EX REL. FOCKE, APPELLANT, v. PRICE, APPELLEE.
STATE, EX REL. CREAGER, APPELLANT, v. PRICE, APPELLEE.

Opinion of the Supreme Court of Ohio.

Appellants, Focke and Creager, residents of the city of Dayton, were arrested by the Dayton police upon affidavits sworn to before a deputy clerk of the Municipal Court of Dayton and warrants of arrest forthwith issued by such deputy clerk in the name of her superior, without a determination by a judge, clerk or magistrate of reasonable grounds to believe that the offenses charged had been committed. The offense charged in each case was a misdemeanor, namely, a violation of the city income tax ordinace, in that the appellant refused to permit an examination of his books and records.

Creager at once filed a petition in habeas corpus in the Court of Appeals.

When arraigned, Focke refused to plead or in any manner acknowledge jurisdiction of the court over his person, but filed a motion to quash for lack of due process. The Municipal Court overruled the motion. Focke then filed a petition in habeas corpus in the Court of Appeals.

Appellants contended that the deputy clerk of the Municipal Court was without statutory authority to issue the warrants for arrest without a determination by a judge, clerk or magistrate of reasonable grounds to believe that the offenses charged had been committed, and that their issuance was in violation of appellants' constitutional rights to due process and to be secure from unreasonable search without probable cause.

The Court of Appeals denied the relief sought in each case.

Appeals as of right bring both causes to this court for review.

Per Curiam. The appellants have an adequate remedy at law by way of appeal. The judgments of the Court of Appeals are hereby affirmed on authority of *Yutze v. Copelan, Chief of Police*, 109 Ohio St., 171, 142 N. E., 33, 32 A. L. R., 1048.

Judgments affirmed.

Weygandt, C. J., Matthias, Hart, Zimmerman, Stewart, Bell and Taft, JJ., concur.

APPENDIX E.

Statutes Involved.

Ohio Revised Code, Section 1901.31.

The clerk and deputy clerks of a municipal court shall be selected, compensated, give bond, and have powers and duties as follows:

(A) There shall be a clerk of the court appointed or elected as follows:

(1) If the population of the territory exceeds one hundred thousand at the regular municipal election next preceding the expiration of the term of the present clerk, a clerk shall be nominated and elected by the qualified electors of the territory in the manner provided for the nomination and election of judges in section 1901.07 of the Revised Code.

The clerk so elected shall hold office for a term of six years, which term shall commence on the first day of January next after his election, and until his successor is elected and qualified. In the Cincinnati municipal court, the clerk of courts of Hamilton county shall be the clerk of the municipal court, and may appoint an assistant clerk who shall receive such compensation, not less than two thousand dollars per annum, payable out of the treasury of Hamilton county in semimonthly installments, as the board of county commissioners prescribes, and such other compensation, not less than twenty-five hundred dollars per annum, payable in semimonthly installments out of the city treasury, as the legislative authority prescribes.

(2) If the population of the territory is less than one hundred thousand, the clerk shall be appointed by the court, and said clerk shall hold office until his successor is appointed and qualified, except that in the Lorain, Alliance, and Massillon municipal courts the clerk shall be elected.

During the temporary absence of the clerk due to illness, vacation, or other proper cause, the court may appoint a temporary clerk who shall be paid the same compensation and have the same authority and perform the same duties as the clerk.

(B) When a vacancy in the office of the clerk of a municipal court, except the Cincinnati municipal court, occurs in a territory where the population exceeds one hundred thousand, the court shall appoint a clerk who shall serve until his successor is elected and qualified. A successor shall be elected to fill the office for the unexpired term at the first municipal election held more than one hundred twenty days after the vacancy has occurred.

(C) In territories having a population of less than one hundred thousand, the clerk of a municipal court shall receive such annual compensation as the legislative authority prescribes; in territories having a population of one hundred thousand or more, except in Cincinnati municipal court, the clerk shall receive annual compensation in a sum equal to eighty-five per cent of the salary of a judge of such court. Such compensation is payable in semimonthly installments from the same sources and in the same manner as provided in section 1901.11 of the Revised Code.

The clerk's compensation shall not exceed that of the clerk of courts of the county in which the municipal court is located.

(D) Before entering upon the duties of his office, the clerk of a municipal court shall give bond of not less than six thousand dollars to be determined by the judges of the court conditioned upon the faithful performance of his duties as clerk.

(E) The clerk of a municipal court shall have general powers to administer oaths, take affidavits, and issue exe-

cutions upon any judgment rendered in the municipal court, including a judgment for unpaid costs, power to issue and sign all writs, process, subpoenas, and papers issuing out of the court, and to attach the seal of the court thereto, and, power to approve all bonds, sureties, recognizances, and undertakings fixed by any judge of the court or by law. He shall file and safely keep all journals, records, books, and papers belonging or appertaining to the court, record its proceedings, and perform all other duties which the judges of the court may prescribe, and keep a book showing all receipts and disbursements, which shall be open for public inspection at all times.

The clerk shall prepare and maintain a general index, a docket, and such other records as the court, by rule, requires, all of which shall be the public records of the court. In such docket he shall enter, at the time of the commencement of an action, the names of the parties in full, the names of the counsel, and the nature of the proceedings. Under proper dates, he shall note the filing of the petition, issuing of summons or other process, returns, and pleadings subsequent thereto. He shall also enter all reports, verdicts, orders, judgments, and proceedings of the court clearly specifying the relief granted or orders made in each action. The court may order an extended record of any of the above to be made and entered, under the proper action heading, upon such docket at the request of any party to said case, the expense of which may be taxed as costs in the case or may be required to be prepaid by the party demanding the same, upon order of the court.

(F) The clerk of a municipal court shall receive and collect all costs, fees, fines, penalties, bail, and other moneys payable to the office or to any officer of the court and issue receipts therefor, and shall each month disburse the same to the proper persons or officers and take receipts

therefor, provided that fines received for violation of municipal ordinances shall be paid into the treasury of the municipal corporation whose ordinance was violated and to the county treasury all fines collected for the violation of state laws, subject to sections 3375.50 and 3375.53 of the Revised Code. Moneys deposited as security for costs shall be retained pending the litigation. He shall keep a separate account of all receipts and disbursements in civil and criminal cases, which shall be a permanent public record of the office, as required by the bureau of inspection and supervision of public offices, and on the expiration of his term such records shall be delivered to his successor. He shall have other powers and duties as are prescribed by rule or order of the court.

(G) All moneys paid into a municipal court shall be noted on the record of the case in which they are paid and shall be deposited in a state or national bank selected by the clerk. On the first Monday in January of each year the clerk shall make a list of the titles of all cases in the municipal court which were finally determined more than one year past in which there remains unclaimed in the possession of the clerk any funds, or any part of a deposit for security of costs not consumed by the costs in the case. The clerk shall give notice of the same to the parties entitled to said moneys or to their attorneys of record. All such moneys remaining unclaimed on the first day of April of each year shall be paid by the clerk to the city treasurer. Any part of such moneys shall be paid by such treasurer at any time to the person having the right thereo, upon proper certification of the clerk.

(H) Deputy clerks may be appointed by the clerk and shall receive such compensation payable in semimonthly installments out of the city treasury as the clerk may prescribe. Each deputy clerk shall take an oath of office

before entering upon the duties of his office, and when so qualified, may perform the duties appertaining to the office of the clerk. The clerk may require any of the deputy clerks to give bond of not less than three thousand dollars, conditioned for the faithful performance of his duties.

The clerk or a deputy clerk shall be in attendance at all sessions of the court, although not necessarily in the court-room, and may administer oaths to witnesses and jurors and receive verdicts.

Ohio Revised Code, Section 2725.01.

Whoever is unlawfully restrained of his liberty, or entitled to the custody of another, of which custody such person is unlawfully deprived, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment, restraint, or deprivation.

Ohio Revised Code, Section 2725.06.

When a petition for a writ of habeas corpus is presented, if it appears that the writ ought to issue, a court or judge authorized to grant the writ must grant it forthwith.

Revised Code of Ohio, Section 2935.10.

Any judge or clerk of a court of record, or of any municipal court, or any magistrate, may issue process for the arrest of a person charged with an offense returnable in the court having jurisdiction thereof.

Ohio Revised Code, Section 2935.11.

When an affidavit charging a person with the commission of an offense is filed with a judge, clerk, or magistrate, if he has reasonable ground to believe that the offense charged has been committed, he shall issue a warrant for the arrest of the accused. If the offense charged is a violation of the laws of the state, such warrant may be directed to and executed by any officer named in section 2935.03 of the Revised Code. If the offense charged is a violation of the ordinance or regulation of a municipal corporation, such process shall be directed to and executed by the officers of such municipal corporation.